

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ELIXAVIER PACHECO,

Petitioner,
v.

STATE OF WISCONSIN,

Respondent.

ORDER

Case No. 15-cv-178-jdp

Petitioner Elixavier Pacheco, a prisoner in the custody of the Wisconsin Department of Corrections, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner requests leave to proceed without prepayment of the filing fee. Petitioner has supported this request with an affidavit of indigency and a six-month trust account statement from the institution.

In determining whether to allow a prisoner to proceed without prepayment, this court uses the following formula. First, the court determines petitioner's average monthly deposits and average monthly balances for the six-month period immediately preceding the filing of the petition. If 20% of the greater of these two figures is \$5 or more, the petitioner is not eligible for indigent status and will have to prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, petitioner will be required to prepay whatever portion less than \$5 has been calculated.

Applying this formula, I find that petitioner is able to pay the filing fee. According to the trust account statement, in the past six months petitioner's monthly balance has averaged \$64.63 and 20% of this figure is \$12.93. Accordingly, I will deny petitioner's application for leave to proceed without prepayment of the filing fee. To proceed further on this habeas

petition, petitioner must pay the \$5 filing fee. If petitioner fails to pay the fee by May 4, 2015, the petition will be dismissed for failure to prosecute.

ORDER

IT IS ORDERED that the petition of Elixavier Pacheco, for leave to proceed without prepayment of the filing fee is DENIED. Petitioner has until May 4, 2015 in which to pay the \$5 filing fee. If petitioner fails to submit the fee by May 4, 2015, the petition will be dismissed for failure to prosecute.

Entered this 16th day of April, 2015.

BY THE COURT:

/s/

PETER OPPENEER
Magistrate Judge